

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Thai Corner c/o Kanit Boonnag

Owner: Lincoln Real Estate, 25 North Pleasant St., Amherst, MA 01002

Date application filed with the Town Clerk: June 2, 2009

Nature of request: Request for Special Permit to renew ZBA FY2004-00031 for a restaurant, with food service on the first and second floor and serving alcohol, under Section 10.33 of the Zoning Bylaw

Address: 31 Boltwood Walk (Map 14A, Parcel 54, B-G District)

Legal notice: Published on June 24 and July 1, 2009 in the Daily Hampshire Gazette and sent to abutters on June 24, 2009

Board members: Tom Simpson, Hilda Greenbaum and Tom Ehrgood

Submissions:

- One (1) copy of Memorandum, ZBA FY2009-00039, dated July 2, 2009;
- One (1) copy of the ZBA application, filed with the Town Clerk on June 2, 2009;
- One (1) copy of Management Plan;
- One (1) copy of the existing first floor plan;
- One (1) copy of the proposed second floor plan;
- One (1) copy of ZBA FY2004-0031, submitted by staff;
- One (1) copy of ZBA FY2003-00041, submitted by staff.

Site Visit: July 6 and July 8, 2009

Tom Simpson, Hilda Greenbaum and Tom Ehrgood met with Kanit Boonnag on the site. The Board observed the following:

- The location of the existing building located adjacent to the municipal parking garage and several other restaurants, in the downtown business district;
- The existing arrangement of the first floor, including seating area, cash register, kitchen, bathrooms and access to the second floor;
- The proposed seating arrangement of the second floor, consisting of 12 seats;
- The existing second floor open storage area which at the time of the site visit contained various items to be removed;
- The existing second floor prep kitchen, dishwasher area and separate storage area for restaurant goods and supplies;
- The existing second egress from the rear storage area to the first floor kitchen.

Public Hearing: July 9, 2009

Ms. Boonnag presented the application. She stated the following:

- Her brother, Chet Satiempoch, owns the restaurant and that she has been the manager for several years;
- They are requesting to renew the previous Special Permit from 2004, which allowed the use of the second floor for food service;
- The first floor has not changed much, but they have prepared a floor plan for the first floor and a new floor plan for the second floor.

Mr. Simpson asked how many seats there are on the first floor. Ms. Boonnag stated that there are currently 30 seats on the first floor. She stated that the previous permit allowed 24 seats on the first floor.

Mr. Bagg stated that there was no floor plan on file for Thai Corner and that the applicant has prepared an updated first floor plan as part of this application.

Mr. Simpson asked how many seats there will be on the second floor. Ms. Boonnag stated that they would like to have 12 seats on the second floor. She stated that the previous permit allowed for up to 18 people on the second floor. She noted that they are reducing the number of seats on the second floor and adding six (6) seats on the first floor so the number would be the same.

Mr. Simpson clarified that there would be a total of 42 seats on the first and second floor and that the management plan indicates 5 employees. He noted that the four (4) outdoor dining seats do not need to be included in the total occupancy calculation. Therefore, the total inside occupancy should be no more than 47 people with the four (4) seats outside not included in the occupancy total.

Mr. Simpson asked whether the two (2) outdoor dining tables, with a total of four (4) chairs, would be located on the owner's (landlord's) property. Ms. Boonnag stated that she believes that the outdoor dining tables would be located on the landlord's property. She stated that the seats will be right next to the handicapped accessible ramp along the building and that the landlord is agreeable to having the tables located there.

Mr. Simpson noted that the outdoor dining will have to be located such that it does not block any egress to and from the other buildings in the vicinity.

Mr. Simpson stated that the application materials included a waiver from the Architectural Access Board (AAB).

Mr. Bagg stated that he had spoken with the applicant and a representative of the AAB and was informed that the variance to utilize the second floor for food service was still valid.

Ms. Greenbaum asked whether they plan to have a bar area for people waiting for seats and if they have any problems with crowd control. Ms. Boonnag stated that they do not have a bar, but they do serve alcohol to patrons with their food. She stated that they have not had any problems with crowds and that if they could not seat everyone, they will ask them to come back.

Mr. Simpson stated that the Fire Department had provided a review of the application in a letter dated June 29, 2009. He stated that item #3 indicates “the primary access for the Fire Department will be the main entrance on Boltwood Walk. This will be the location of the key vault, sprinkler connection and fire alarm annunciator”. Mr. Simpson asked the applicant whether she was aware if the restaurant had either a key vault or a fire alarm annunciator.

Ms. Boonnag stated that she did not know if the restaurant had either item.

Ms. Weeks stated that the restaurant may not have a key vault as this is something that the Fire Department is trying to get all commercial properties to begin installing. She noted that if there were a fire alarm annunciator, it would be located immediately at the inside entrance.

Ms. Boonnag stated that she could go to the restaurant to see if any of the items are installed.

Mr. Simpson agreed to allow the applicant to leave and come back and inform the Board what she could see.

Ms. Greenbaum MOVED to suspend the public hearing to allow the applicant to determine if the restaurant currently had a key vault, sprinkler connection and a fire alarm annunciator. Mr. Ehrgood seconded the motion and the Board VOTED unanimously.

Ms. Boonnag returned and stated that she did not see a key vault, sprinkler connection or a fire alarm annunciator.

Mr. Simpson stated that he would consider making the installation of the equipment a condition of the approval.

Ms. Weeks suggested that the condition be worded such that if a key vault, sprinkler connection and/or fire alarm annunciator are required they shall be located at the front entrance.

Mr. Simpson MOVED to close the public hearing. Ms. Greenbaum seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting:

During the public meeting the Board drafted conditions and findings that would be appropriate if the Special Permit were to be approved.

The Board members determined that because the applicant has submitted an updated floor plan for the first floor and an updated Management Plan, a new Special Permit should consolidate and supersede the older Special Permits.

The Board members discussed the Fire Department letter dated June 30, 2009. Ms. Weeks stated that the restaurant may not be required to have an alarm. She added that the Fire Department raised a question about total occupancy being proposed and that occupancy over 50 people would put the use into a different category, perhaps triggering additional requirements such as a sprinkler and/or alarm. Ms. Weeks stated that for occupancy of greater than 50, the restaurant would be required to install fire protection systems.

The Board members determined that a condition could state that, if required, the applicant shall install a key vault, sprinkler connection and fire alarm annunciator.

Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses. The proposal includes re-issuing a previously approved Special Permit allowing food service on the first and second floor and maintaining other permitted uses, such as alcohol service and outdoor dining in the central business district that contains other restaurants and similar uses. The proposal includes interior expansion only, with no changes to the exterior of the building.

10.382, 10.383 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site and will not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. The proposal includes the continued use of the property as a restaurant in the downtown business district. The restaurant contains a handicapped accessible ramp providing access to the first floor with a waiver from the Architectural Access Board for food service on the second floor. The Permit will require the outdoor dining to be located in an area that will not block egress to and from adjacent properties.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The restaurant has been in existence and operating in a similar manner and in the same location since 1998. The Permit allows the use of the second floor of the building where there is adequate space available for patrons and storage. The use of the second floor was granted a waiver from the Architectural Access Board. The applicant has provided an updated first floor plan and Management Plan allowing for clearer understanding of the nature of the use.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the Bylaw. The property is located in the Municipal Parking District and is therefore not required to provide onsite parking. The application did not request any changes to the existing signs associated with the use of the property as a restaurant.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site. The property is serviced by Town water and sewer. The Management Plan provides for adequate methods of trash disposal and storage, and the expansion into the second floor will be incorporated into existing practices.

10.398 – The proposal is in harmony with the general purpose and intent of this Bylaw because it promotes the health, safety, convenience, and general welfare of the inhabitants of the Town of Amherst. This permit organizes and clarifies the previously existing uses on the property, reducing confusion and allowing clearer management and enforcement. The continued use of the property for a restaurant is a compatible use in the downtown business district. The proposal maintains the handicapped accessible first floor seating area. There are no exterior alterations of the existing building. The proposal provides a use that is compatible with the downtown business district.

Public Meeting – Zoning Board Decision

Ms. Greenbaum moved to APPROVE the application with conditions. Mr. Simpson seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2009-00039, for a restaurant, known as Thai Corner, with food and alcohol service on the first and second floor, and outdoor dining area, as requested in the application submitted by Kanit Boonnag, at 31 Boltwood Walk (Map 14A, Parcel 54, B-G District), with conditions.

THOMAS SIMPSON

HILDA GREENBAUM

TOM EHRCOOD

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2009.

NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants Special Permit, ZBA FY2009-00039, for a restaurant, known as Thai Corner, with food and alcohol service on the first and second floor, and outdoor dining area, as requested in the application submitted by Kanit Boonnag, at 31 Boltwood Walk (Map 14A, Parcel 54, B-G District), with the following conditions:

1. This permit shall supersede all previous Special Permits for the restaurant.
2. The total occupancy of the interior of the restaurant shall not exceed 49 people, including employees and patrons, on the first and second floor.
3. The interior and exterior seating shall be in accordance with the first floor plan (including outdoor dining) and second floor plan within the packet of materials approved by the Zoning Board of Appeals on July 9, 2009.
4. There shall be no more than 30 seats on the first floor, no more than 12 seats on the second floor, and no more than 4 seats at two tables outside.
5. The outdoor seating shall be located so that it does not block egress points for other buildings in the area.
6. There shall be no disposable tableware used at the outdoor seating area.
7. There shall be a trash receptacle located in close proximity to the outdoor seating area, which shall be maintained and emptied by the restaurant management.
8. There shall be no more than five (5) employees on the premises at any one time.
9. All employees who serve alcohol, including the restaurant manager, shall be appropriately trained and certified in AlcoholSafe or comparable alcohol service courses.
10. Alcohol shall only be served with food.
11. The restaurant shall be managed in accordance with the Management Plan approved and stamped by the Zoning Board of Appeals on July 9, 2009.
12. Any changes to the existing signs shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting.
13. Any substantial changes to the approved floor plans or Management Plan shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting.
14. The street address of the building shall be displayed with reflective lettering in a location acceptable to the Town of Amherst Fire Department.
15. All other applicable federal, state and local codes shall be in effect.
16. If any federal, state, or local codes require the installation of a key vault, sprinkler connection and/or fire alarm annunciator they shall be located at the front entrance on Boltwood Walk in accordance with the letter from the Town of Amherst Fire Department dated June 29, 2009.
17. This permit shall expire upon change of Management or ownership of the restaurant.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE